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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. 2011-682

13 **KRISTEN ANN HUMPHRIES**
14 882 Mentone Avenue
Grover Beach, CA 93433

STATEMENT OF ISSUES

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
19 her official capacity as the Executive Officer of the Board of Registered Nursing (Board),
20 Department of Consumer Affairs.

21 2. On or about June 7, 2010, the Board of Registered Nursing (Board) received an
22 application for a Registered Nurse License by Endorsement from Kristen Ann Humphries
23 (Respondent). On or about June 2, 2010, Respondent certified under penalty of perjury to the
24 truthfulness of all statements, answers, and representations in the application. The Board denied
25 the application on September 8, 2010.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

7 "(a) A board may deny a license regulated by this code on the grounds that the applicant
8 has one of the following:

9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
10 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
11 board is permitted to take following the establishment of a conviction may be taken when the
12 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
13 an order granting probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under the provisions of Section 1203.4 of the Penal Code.

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16 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
17 would be grounds for suspension or revocation of license.

18 (B) The board may deny a license pursuant to this subdivision only if the crime or act
19 is substantially related to the qualifications, functions, or duties of the business or profession for
20 which application is made."

21 5. Section 490 states, in pertinent part:

22 "(a) In addition to any other action that a board is permitted to take against a licensee, a
23 board may suspend or revoke a license on the ground that the licensee has been convicted of a
24 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
25 or profession for which the license was issued.

26 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
27 discipline a licensee for conviction of a crime that is independent of the authority granted under

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subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter do any of the following:

....

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in

1 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
2 thereof.”

3 **REGULATORY PROVISIONS**

4 8. California Code of Regulations, title 16, section 1444 states, in pertinent part:

5 “A conviction or act shall be considered to be substantially related to the qualifications,
6 functions or duties of a registered nurse if to a substantial degree it evidences the present or
7 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
8 safety, or welfare.

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Conviction of a Crime)**

11 9. Respondent's application is subject to denial under sections 2761 subdivision (f) and
12 480 subdivision (a)(1), in that Respondent was convicted of a crime. On or about May 3, 2007,
13 after pleading guilty, Respondent was convicted of one misdemeanor count of violating RCW
14 46.61.502 [driving under the influence of intoxicating liquor and/or drugs] in the criminal
15 proceeding entitled *The State of Washington v. Kristen Ann Humphries* (Dist. Ct. King County,
16 2007, No. C00545589). The Court sentenced Respondent to 365 days in jail, with 364 days
17 suspended, and placed her on 12 months probation, with terms and conditions. The
18 circumstances surrounding the conviction are that on or about January 27, 2007, during a traffic
19 stop by the Washington State Highway Patrol, Respondent was contacted. While speaking to
20 Respondent, the officer detected a strong odor of intoxicants emitting from within the vehicle.
21 She was observed to have watery bloodshot eyes, a thick and slurred speech, and a strong odor of
22 intoxicants emitting from her breath. When asked how much she had to drink, Respondent stated,
23 “I’m not going to lie...I had a few.” During the booking procedure, Respondent submitted to a
24 breath test that resulted in a blood-alcohol level of 0.21%.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of License)

10. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a licentiate of the business or profession in question would be grounds for suspension or revocation of her license, as follows:

a. Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered nurse which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare, in violations of sections 2761, subdivision (f) and 490, in conjunction with California Code of Regulations, title 16, section 1444. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.

b. Respondent used alcoholic beverages to an extent or in a manner dangerous and injurious to herself, and the public, when she operated a vehicle while having a blood alcohol content level of 0.21%, in violation of section 2761, subdivision (a), as defined in section 2762, subdivision (b). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.

c. Respondent was convicted of a criminal offense involving the consumption of alcohol, in violation of section 2761, subdivision (a), as defined in section 2762, subdivision (c). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
and that following the hearing, the Board issue a decision:

1. Denying the application of Kristen Ann Humphries for a Registered Nurse License by Endorsement; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 2/4/2011


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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